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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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Illinois Commerce Commission
RAIL SAFETY SECTION

COUNTY OF ST. CLAIR,
St. Clair County, Illinois,

Petitioner,

vs.

Docket No. T03-0059

KANSAS CITY SOUTHERN RAILWAY
COMPANY, UNION PACIFIC RAILROAD
COMPANY, and ILLINOIS DEPARTMENT
OF TRANSPORTATION

Respondents.

**RESPONDENT KANSAS CITY SOUTHERN
RAILWAY COMPANY'S ANSWER**

COMES NOW Respondent Kansas City Southern Railway Company ("KCS") and for its
Answer to the Petition of the County of St. Clair, states as follows:

1. Respondent KCS is without sufficient information to admit or deny the
allegations of paragraph 1 of the Petition, and therefore, Respondent KCS denies the allegations
of paragraph 1 of the Petition.

2. Respondent KCS admits that it is a lawfully organized corporation and is licensed
to do business in the State of Illinois, with its principle offices located in Kansas City, Missouri,
and is a common carrier by rail, but states that the remaining allegations are a conclusion of law,
to which no response is required, and therefore, Respondent KCS denies the remaining
allegations of paragraph 2 of the Petition.

3. Respondent KCS is without sufficient information to admit or deny the
allegations of paragraph 3 of the Petition, and therefore, Respondent KCS denies the allegations
of paragraph 3 of the Petition.

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4. On information and belief, Respondent KCS admits that Respondent Illinois Department of Transportation has its principle offices located in Springfield, Illinois, but states that the remaining allegations are a conclusion of law, to which no response is required, and therefore, Respondent KCS denies the remaining allegations of paragraph 4 of the Petition.

5. On information and belief, Respondent KCS admits the allegations of paragraph 5 of the Petition.

6. On information and belief, Respondent KCS admits the allegations of paragraph 6 of the Petition.

7. Respondent KCS denies the allegations of paragraph 7 of the Petition, but states that to the extent Petitioner is alleging traffic counts over the crossing at issue, Respondent KCS will stipulate to traffic data maintained by the Illinois Commerce Commission ("Commission").

8. Respondent KCS denies the allegations of paragraph 8 of the Petition.

9. Respondent KCS denies the allegations of paragraph 9 of the Petition.

Defenses

10. For its first defense, Respondent KCS states that Petitioner's Petition was originally filed in the Commission as an Amended Petition (due to a typographical error in the original) in August of 1995 as Docket Number T95-0070, and only differs from Petitioner's 2003 Petition in that it names Respondents KCS and Union Pacific Railroad Company (the successors in interest respectively to Gateway Western Railway Company and SPCSL Corp.) and alleges that County Highway 19 (Mousette Lane) averages 3600 instead of 2900 vehicles per day. *See* 1995 Amended Petition attached hereto as Exhibit 1. Thereafter and pursuant to law, discovery was conducted and the matter was heard before a duly authorized Commission Hearing Examiner at the Commission offices in Springfield on September 22, 1995, November

2, 1995, and March 7, 1996 in which all parties participated and filed briefs, including recommendation from the Commission's staff. *See* 1996 Staff Recommendation attached hereto as Exhibit 2¹. Accordingly, the Commission marked the docket as heard and taken, made findings of fact, and eventually issued its Order denying Petitioner's Petition for the overpass because it was not required for public safety. *See* 1997 Order attached hereto as Exhibit 3. Therefore, Petitioner's Petition is in regard to the exact same crossing at issue, makes the same allegations, and prays for the same relief and so should be consolidated with Docket Number T95-0070 pursuant to Section 200.600 of the Illinois Administrative Code.

11. For its second defense, Respondent KCS hereby incorporates paragraph 10 as if fully set forth herein and states that every allegation, claim, and issue presented in Petitioner's Petition with regard to the crossing at issue has been ruled upon and decided by the Commission in accordance with its statutory grant of authority and so Petitioner's Petition should be barred and dismissed with prejudice.

12. For its third defense, Respondent KCS hereby incorporates paragraphs 10 and 11 as if fully set forth herein and states that Petitioner failed to seek appeal or administrative review of the Commission's Order with regard to the crossing at issue and so Petitioner's Petition is now barred and should be dismissed with prejudice.

13. For its fourth defense, Respondent KCS hereby incorporates paragraphs 10, 11, and 12 as if fully set forth herein and states that Petitioner has waived any rights alleged in its Petition that it may have had by its want of prosecution with regard to the crossing at issue and so Petitioner's Petition should be dismissed with prejudice.

¹ Respondent KCS does not burden the Commission with voluminous copies of the Commission's own transcripts and other discovery, but will provide the Commission with copies of hearing transcripts and other discovery conducted during the proceedings if so requested by the Commission.

14. For its fifth defense, Respondent KCS hereby incorporates paragraphs 10, 11, 12, and 13 as if fully set forth herein and states that Petitioner's Petition is untimely and/or time-barred with regard to the crossing at issue and so Petitioner's Petition should be barred and dismissed with prejudice.

15. For its sixth defense, Respondent KCS hereby incorporates paragraphs 10, 11, 12, 13, and 14 as if fully set forth herein and states that it has satisfied the Commission's 1997 Order and already satisfied all of its obligations with regard to the crossing at issue and so Petitioner's Petition should be barred and dismissed with prejudice.

16. For its seventh defense, Respondent KCS hereby incorporates paragraphs 10, 11, 12, 13, 14, and 15 as if fully set forth herein and states that all redundant matter between Petitioner's 1995 Petition and 2003 Petition should be stricken as irrelevant, immaterial, and scurrilous.

17. For its eight defense, Respondent KCS hereby incorporates paragraphs 10, 11, 12, 13, 14, 15, and 16 as if fully set forth herein and states that Petitioner's Petition fails to state a claim for the relief requested with regard to the crossing at issue because the statutory standard for such relief cannot be met and so Petitioner's Petition should be barred and dismissed with prejudice.

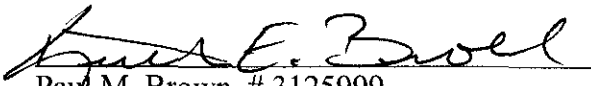
18. For its ninth defense, Respondent KCS hereby incorporates paragraphs 10, 11, 12, 13, 14, 15, 16, and 17 as if fully set forth herein and states that the principles of res judicata are applicable to Petitioner's Petition with regard to the crossing at issue and so Petitioner's Petition should be barred and dismissed with prejudice.

19. For its tenth defense, Respondent KCS hereby incorporates paragraphs 10, 11, 12, 13, 14, 15, 16, 17, and 18 as if fully set forth herein and states that the principles of collateral

estoppel are applicable to all issues raised by Petitioner's Petition with regard to the crossing at issue and so Petitioner's Petition should be barred and dismissed with prejudice.

WHEREFORE, Respondent The Kansas City Southern Railway Company prays that the Illinois Commerce Commission enter an order dismissing Petitioner's Petition with prejudice and denying St. Clair County's prayer for a separation of grades by construction of an overpass structure at the County Highway 19 (Mousette Lane) crossing, and further prays that no portion of any other project costs be allocated to Respondent KCS, and for such other and further relief as the Commission deems appropriate.

Respectfully Submitted,

By 
Paul M. Brown, # 3125999
Keith E. Broll, # 6274622
One US Bank Plaza
St. Louis, Missouri 63101
(314) 552-6000 telephone
(314) 552-7000 facsimile

OF COUNSEL:
THOMPSON COBURN LLP

Attorneys For Respondent
Kansas City Southern Railway Company


VERIFICATION

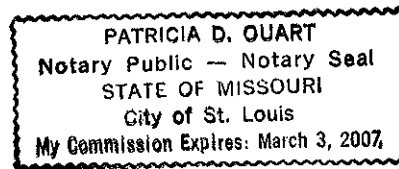
STATE OF MISSOURI)
) SS
COUNTY OF CITY OF ST. LOUIS)

Keith E. Broll certifies that the statements set forth in this Answer are true and correct, except as to matters therein stated to be on information and belief and as to such matters Keith E. Broll certifies as aforesaid that he verily believes the same to be true.



Subscribed and sworn to before me this 27th day of June 2003.


Notary Public
My Commission Expires 3/3/2007



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Respondent Kansas City Southern Railway Company's Answer was sent, via U.S. Mail, first class, postage prepaid, this 27th day of June, 2003 to the addressed as follows:

Joseph Von De Bur
Illinois Commerce Commission
527 East Capital Avenue
Springfield, Illinois 62701
Commission Staff

Victor A. Modeer
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62706
Respondent

Dave McKernan
Union Pacific Railroad Company
210 North 13th Street, Room 1612
St. Louis, Missouri 63103
Respondent

Robert B. Haida
County of St. Clair
1415 North Belt West
Belleville, Illinois 62226
Petitioner

A handwritten signature in black ink, appearing to read "Robert B. Haida", written over a horizontal line.



ST. CLAIR COUNTY
Department of Roads & Bridges
1415 North Belt West
Belleville, IL 62223-5999

233-1392 - 233-5133
FAX No. (618) 233-0996

William E. Polka, P.E.
County Engineer

File:

Amended Petition
St. Clair County vs
Gateway Western Railway Co.,
SPCSL Corp. and the Illinois
Dept. of Transportation

August 11, 1995

Illinois Commerce Commission
527 East Capitol Avenue
P.O. Box 19280
Springfield, IL 62794-9280

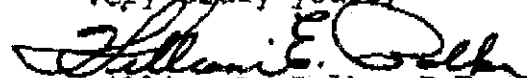
Dear Madam/Sir:

Enclosed is amended copy of Petition regarding the above captioned proceeding.

The reason the petition has been amended is because the respondent was building the structure rather than the petitioner.

If you have any questions concerning this petition, please contact me at the above number.

Very truly yours,


William E. Polka, P.E.
County Engineer

WEP:rjr
enc.

cc: Illinois Dept. of Transportation
Gateway Western Railway Co.
SPCSL Corp.

LTICCAPE



STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COUNTY OF ST. CLAIR)
St. Clair County, Illinois,)
)
Petitioner)
)
VS.)
)
GATEWAY WESTERN RAILWAY COMPANY,)
SPCSL CORP and the ILLINOIS)
DEPARTMENT OF TRANSPORTATION,)
)
Respondents)

In RE the Matter of the Petition)
of the County of St. Clair for an)
Order compelling the building of a)
bridge carrying St. Clair County)
Highway 19 over the triple tracks)
of Gateway Western Railway Company)
and the SPCSL CORP and that such)
Order prescribe the manner in which)
the expenses to rebuild said bridge)
shall be divided among the parties)
and that said Order direct the)
Illinois Department of Transporta-)
tion to pay a substantial part)
of the expenses for rebuilding of)
said bridge from the Illinois Grade)
Crossing Protection Fund)

A M E N D E D

P E T I T I O N

TO THE ILLINOIS COMMERCE COMMISSION

Petitioner, County of St. Clair, respectfully represents to the Commission that:

1. That Petitioner, the County of St. Clair, acting by and through its County Highway Department, has its principal offices located at 1415 North Belt West, Belleville, Illinois, 62223.

2. That Respondent, Gateway Western Railway Company, is a lawfully organized corporation and is licensed to do business in the State of Illinois, with its principle offices located at 15 Executive Drive, Suite 8, Fairview Heights, Illinois, 62208, and is a common carrier by rail and is thus subject to the provisions of the Public Utilities Act, as amended.

3. That Respondent, SPCSL CORP, is a lawfully organized

corporation and is licensed to do business in the State of Illinois, with its principle office located at 208 South LaSalle, Chicago, Illinois, 60604, and is a common carrier by rail and is thus subject to the provisions of the Public Utilities Act, as amended.

4. That Respondent, ILLINOIS DEPARTMENT OF TRANSPORTATION, with its principle offices located at 2300 South Dirksen Parkway, Springfield, Illinois, is a necessary and proper party to these proceedings.

5. That the lines of both Respondent railroads, Gateway Western Railway Company and the SPCSL CORP, extend in a generally northwesterly to southeasterly direction across, at grade, over County Highway 19 in St. Clair County, Illinois.

6. That an at grade crossing extends over the lines of Respondent's railroads as set forth in Paragraphs 5 above at County Highway 19 (Mousette Lane) which is a northeasterly to southwesterly road in the West Central part of St. Clair County, Illinois, and which is part of the county highway system.

7. That County Highway 19 is a main artery between the communities of Cahokia, Alorton and Centreville, Illinois, and carries an average of 2900 vehicles per day.

8. That the at-grade crossing is a bottleneck to local and statewide vehicular traffic because of the number of train movements per day on all three tracks that feed into the freight yards of both railroads, causing long delays to vehicles crossing the tracks.

9. That Petitioner is willing to contribute towards the expense of building the vehicular bridge and necessary roadway work, but is unable to defray costs which should be borne by Respondents on behalf of the health, safety, and welfare of the statewide public.

WHEREFORE, Petitioner prays that:

(A) That the Illinois Commerce Commission set a date certain for hearing on this Petition causing due notice to all necessary parties.

(B) That the Illinois Commerce Commission enter an Order directing Petitioner to build the bridge carrying C.H. 19 over the three sets of tracks of the Gateway Western Railway Company and the SPCSL CORP in St. Clair County, Illinois.

(C) That the Illinois Commerce Commission in such Order prescribe the manner in which the expenses to build the bridge carrying C.H. 19 over the three sets of tracks of the Gateway Western Railway Company and the SPCSL CORP in St. Clair County, Illinois, shall be divided among the parties and direct the

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Illinois Department of Transportation to pay a substantial part of the expenses from the Illinois Grade Crossing Protection Fund.

(D) That the Petitioner be granted such other and further relief as the Illinois Commerce Commission may deem appropriate.

DATED in the County of St. Clair, St. Clair County, Illinois, this 17th day of August, A.D., 1995.

COUNTY OF ST. CLAIR

By Robert B. Hardy

VERIFICATION

STATE OF ILLINOIS

)) SS

COUNTY OF ST. CLAIR

Robert B. Haida, being duly sworn, deposes and says:
That he is the Attorney for the Petitioner
in this proceeding; that the foregoing Petition is true of his own
knowledge except as to those matters that are therein stated to be
alleged on information and belief, and that, as to those matters,
he believes it to be true.

Robert B. Haida

SUBSCRIBED AND SWORN to before me this 11th day of
August, 1995.

Robert J. Rapp
ROBERTA J. RAPP, Public
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 3/99

My Commission Expires:

CERTIFICATE OF SERVICE

William E. Polka, certifies that he served a
copy of the foregoing Petition upon the following:

ILLINOIS DEPARTMENT OF TRANSPORTATION
2300 South Dirksen Parkway
Springfield, IL 62706

GATEWAY WESTERN RAILWAY COMPANY
15 Executive Drive
Suite 8
Fairview Heights, IL 62208

SPCSL CORP
C.T. Corporation System
208 South LaSalle
Chicago, IL 60604

by placing a true and correct copy of said Petition in an envelope,
each addressed as is shown above; that he sealed said envelopes and
placed sufficient U.S. postage on each; and further, that he placed
three (3) copies of each of the Petition in an envelope, postage
prepaid, addressed to:

Kevin Sharpe Chief Clerk
ILLINOIS COMMERCE COMMISSION
527 East Capitol Avenue
Springfield, IL 62794-9280

and that he deposited said envelopes so sealed and stamped in the
United State Mail at Bellerive, Illinois, at or about
the hour of 4:00 PM, on the 11th day of August
1995.

Robert B. Hardy
PETITIONER'S ATTORNEY

PETICC19

March 7, 1996

County of St. Clair,
St. Clair County, Illinois,
Petitioner,

vs.

Gateway Wester Railway Company; SPCSL Corp. and
the State of Illinois, Department of
Transportation
Respondents.

T95-0070

Petition of the County of St. Clair for an Order
compelling the building of a bridge carrying
St. Clair County Highway 19 over the triple
tracks and the SPCSL Corp. and that such Order
prescribe the manner in which the expenses to
rebuild said bridge shall be divided among the
parties and that said Order direct the Illinois
Department of Transportation to pay a substantial
part of the expenses for rebuilding said bridge
from the Illinois Grade Crossing Protection Fund.

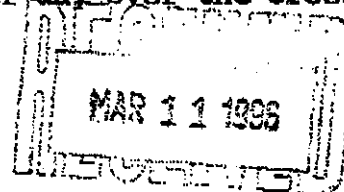
STAFF RECOMMENDATION

After review of the file and testimony in this matter, staff
offers the following recommendation.

In arriving at its decision, staff considered several factors.
First, are there alternate routes that can be utilized that would
negate the need for the highway overpass structure? Next, is there
a pronounced accident history at the at-grade crossing? Does the
average daily vehicular and rail traffic over the crossing warrant
a grade separated crossing? Finally, can the blocking problem as
testified to at the at-grade crossing be remedied by other means.

Regarding the first question, the County Highway 19 crossing
is located less than a quarter mile to the west of a highway
overpass structure carrying I-255 over the same tracks of the
railroads. There is an on/off ramp located immediately to the
south. Approximately one mile to the north of this intersection,
there is another on/off ramp. There are also local roadways under
the interstate for access to housing areas to the east.

The Respondent Railroads' testified that train traffic over
the three tracks across County Highway 19 average one through coal
train per day on the SPCSL and five on the Gateway for a total of
six through train movements per a 24 hour period. The average
daily vehicular traffic is 2900 vehicles per day over the crossing.



Testimony of the accident history at the crossing is non-existent. Statements were made as to driver behavior when the gates are activated at the crossing; i.e., drivers going around the lowered gates. This particular matter is addressed in the blocking portion of this Staff Recommendation. A review of the Commission's file on the accident history of the County Highway 19 crossing shows that there has occurred three accidents on the SPCSL tracks: 11/9/67 with no fatalities or injuries reported; 11/25/72 with one injury reported; and, 3/26/75 with no injuries or fatalities reported. There has been one reported accident on the Gateway which occurred on 1/31/91 with no injuries or fatalities reported. This is not a pronounced accident history. In fact, in consideration of the high amount of vehicular traffic and low amount of train traffic (currently), the accident history is lower than can be expected. For the accidents that occurred prior to 1991 the train traffic was much higher. Staff would recommend that the County Sheriff's office patrol the area and issue tickets to those breaking the law by driving around the lowered gates.

As to the alleged blocking problem in the testimony, it is staff's opinion that the existing circuitry controlling the automatic flashing light signals is a major part of the blocking problem. The motion sensor circuitry currently in place at the County Highway 19 crossing activate the automatic flashing light signals and gates for not only through freight train movements, but also when trains are performing switching moves and are travelling toward or away from the crossing. Even with a timeout feature, the motion sensor circuitry will detect motion within the circuitry limits whether the train is moving toward or away from the crossing. This situation can be addressed by the installation of constant warning time circuitry at the crossing and other circuitry modifications.

Staff is of the opinion that at this time, due to the availability of alternate highway overpass routes over the railroads' tracks, the low amount of train traffic on the three tracks, to the minimal accident history at the crossing and that the blocking problem at the crossing can be substantially alleviated by the installation of different control circuitry, Petitioner's request for permission to construct a highway overpass structure in lieu of the existing at grade crossing be denied. However, staff does recommend that the circuitry at the County Highway 19 at grade crossing be upgraded to constant warning time to address the unnecessary gate operation when switching movements in the vicinity of the crossing. In addition, the middle crossing surface should be replaced and the highway approaches immediately adjacent to the north side of the north crossing and on each side of the south crossing be reworked to remove the humps at the crossing and the eroding overlay.

Staff does not take this position lightly. There is ever increasing demand on the Grade Crossing Protection Fund to the point that there are more projects requested than Fund money available. The Commission must now diligently review each project

on a priority basis. In addition to the aforementioned reasons, the SPCSL, as part of the Southern Pacific system, is to be purchased by the Union Pacific Railroad and the new owner could retain, sell or even abandon the SPCSL main tracks. It is also staff's understanding that the Illinois Central is negotiating for the purchase of those two main line tracks. The uncertain future of the tracks augment staff's concern about committing Fund monies to pay a portion of the cost for a grade separation at County Highway 19. This would not preclude the County from progressing with the project at its cost or filling another Petition with the Commission when the future of the rail lines is more definite.


Robert S. Berry

Staff, Railroad Section
Transportation Division

cc:

Mr. James Slifer, Director
Division of Highways
Illinois Department of
Transportation
2300 South Dirksen Parkway
Springfield, IL 62764

Gateway Western Railway Company
Paul M. Fetterman
15 Executive Drive
Fairview Heights, IL 62208

SPCSL Corp.
Hugh J. Graham, III
Graham & Graham
1201 S. 8th Street
Springfield, IL 62703

St. Clair County Board Chairman
10 Public Square
Belleville, IL 62220

Robert B. Haida
Attorney at Law
County of St. Clair
Department of Roads & Bridges
1415 North Belt West
Belleville, IL 62223-5999

SPCSL Corp.
C T Corporation System
208 South LaSalle Street
Chicago, IL 60604

St. Clair County Clerk
10 Public Square
Belleville, IL 62220



ILLINOIS COMMERCE COMMISSION

May 13, 1997

County of St. Clair,
St. Clair County, Illinois,
Petitioner,

vs.

Gateway Wester Railway Company; SPCSL Corp. and
the State of Illinois, Department of
Transportation
Respondents.

T95-0070

Petition of the County of St. Clair for an Order
compelling the building of a bridge carrying
St. Clair County Highway 19 over the triple
tracks and the SPCSL Corp. and that such Order
prescribe the manner in which the expenses to
rebuild said bridge shall be divided among the
parties and that said Order direct the Illinois
Department of Transportation to pay a substantial
part of the expenses for rebuilding said bridge
from the Illinois Grade Crossing Protection Fund.

TO ALL PARTIES OF RECORD:

Dear Sir/Madam:

Enclosed please find a copy of Order entered by the
Commission in the above entitled matter on May 7, 1997.

Very truly yours,

Kevin L. Sharpe
Director of Processing

CW

Robert L. Artz, Hearing Examiner
Robert S. Berry, Railroad Section Staff

In compliance with the Americans with Disabilities Act and other applicable federal and state laws, the hearing will be accessible to individuals with disabilities. Persons requiring auxiliary aids and services should contact Kevin L. Sharpe at 527 East Capitol Avenue, Springfield, Illinois 62794-9280, at telephone number 217/782-4654 by 5 days prior to the hearing to inform of their anticipated attendance. Text telephone (TDD) available at 217/782-7434. In addition, persons using a text telephone have the option of calling via the Illinois Relay Center by dialing 800/526-0844.

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

County of St. Clair,
St. Clair County, Illinois,
Petitioner,

vs.

T95-0070

Gateway Western Railway Company; SPCSL Corp. and
the State of Illinois, Department of
Transportation,

Respondents.

Petition of the County of St. Clair for an Order
compelling the building of a bridge carrying
St. Clair County Highway 19 over the triple
tracks and the SPCSL Corp. and that such Order
prescribe the manner in which the expenses to
rebuild said bridge shall be divided among the
parties and that said Order direct the Illinois
Department of Transportation to pay a substantial
part of the expenses for rebuilding said bridge
from the Illinois Grade Crossing Protection Fund.

ORDER

By the Commission:

On July 26, 1995, and as amended on August 14, 1995, the County of St. Clair, St. Clair County, Illinois ("Petitioner" or "County") filed its petition with the Illinois Commerce Commission ("Commission") for an order compelling the building of a bridge carrying St. Clair County Highway 19 (Mousette Lane) over the three at-grade tracks of the Gateway Western Railway Company and the SPCSL Corp ("Railroads") in St. Clair County, Illinois and to divide the costs among the parties and the Grade Crossing Protection Fund ("Fund"). The Railroads and the Illinois Department of Transportation ("IDOT") were named as parties respondents.

Pursuant to notice as required by law and by the rules and regulations of the Commission, this matter came on for hearing before a duly authorized Hearing Examiner of the Commission at the offices of the Commission in Springfield, Illinois on September 22, 1995, November 2, 1995 and March 7, 1996. Petitioner, Gateway Western Railway Company and the SPCSL Corp. were each represented by counsel. A representative of IDOT and a representative of the Railroad Section of Transportation Division of the Commission ("Commission staff") participated in the hearings. Briefs were filed by each of the parties as were the recommendations of Commission staff on project work allocations.

On July 26, 1996, on the Hearing Examiner's own motion, the parties were directed to supply cost and technical information to comply with staff's recommendations. On February 28, 1997, this docket was marked "Heard and Taken."

County Highway 19, known locally as Mousette Lane, extends in an approximate northeast/southwest direction. It crosses at-grade at a 90 degree angle with three railroad tracks at the southern edge of the Village of Centreville and adjoining or near the Village of Cohokia and the Village of Sauget, all in St. Clair County, Illinois. The County Highway 19 crossing is located approximately 660 feet to the west of an interstate highway overpass structure carrying I-255 over the same tracks of the railroads and on the southern edge of the Village of Centreville. These two highways run parallel to each other through the Village of Centreville. There is an on/off ramp located immediately to the south of the crossing and another on/off ramp located approximately one mile to the north of this crossing. There are also local roadways under the interstate for access to housing areas to the east.

Train traffic over the three track crossing County Highway 19 average one through coal train a day by the SPCSL and five trains by the Gateway for a total of six through train movements in a 24 hour period. In addition, there are a number of switching movements at the crossing due to the Railroads' yards located at the vicinity of the crossing. Petitioner's Exhibit 7 indicates the gates down time over a five day period taken over a 12 hour period between 6 a.m. and 6 p.m. The down time of the gates, as distinguished from the blockage by trains, averaged approximately 2 hours for each of the twelve hour periods. Commission staff is of the opinion that the excessive down time of the gates which causes the vehicular blockage problem can be to a large extent alleviated. The current motion sensor circuitry in place at the crossing activates the automatic light signals and gates for not only through train movements, but also when the trains are performing switching movements and are travelling toward or away from the crossing. Even with the "times out" feature, that is, until the signal detects after several seconds that there is no movement within the circuit, the motion sensor circuitry will detect motion within the circuitry limits whether the train is moving toward or away from the crossing. This situation can be addressed by the installation of constant warning time circuitry at the crossing along with other circuitry modifications.

The average daily vehicular traffic is 2,700 vehicles per day over the crossing (IDOT, 1993). The accident history at the crossing is practically nonexistent and with no accidents occurring during the last five years. Testimony indicates that

there is some vehicular traffic going around the lowered gates during train switching movements.

Petitioner proposes to construct a highway overpass structure over the present at-grade crossing at an estimated cost of \$2.4 million dollars. The County engineer testified that safety was not the primary reason Petitioner is seeking the overpass structure; rather, it is the intent of the Village to locate an industrial park around Fresh Warehouse located just north of the intersection and to be able to get to that area without any train blockage problems.

Applicable Law

625 ILCS 5/18c-7401(3) ("7401") of the Illinois Commercial Transportation Law, second paragraph thereof, sets forth the requirements for a separation of grades at a crossing:

The Commission shall have the power, after a hearing, to require major alteration of ... any crossing, heretofore or hereafter established, when in its opinion, the public safety requires such alteration...; or to require a separation of grades, at such crossings;...[emphasis added]

7401, third paragraph thereof, sets forth the standards for the improvement of a crossing:

The Commission shall also have the power by its order to require the reconstruction, minor alteration, minor relocation or improvement of any crossing (including the necessary highway approaches thereto) whenever the Commission finds after a hearing or without a hearing as otherwise provided in this paragraph that such reconstruction, alteration, relocation or improvement is necessary to preserve or promote the safety or convenience of the public... [emphasis added]

The above statutory language governs the situation at hand. Constructing a grade separation structure constitutes a major alteration of the crossing as is stated in the second paragraph of Section 7401, above, and that public safety requires such alteration. The theme of Petitioner's evidence is that a separation structure is wanted in order to facilitate the development of an industrial park in the immediate area of the crossing by eliminating any signal or train blockage delays to this area. There have been few accidents, no fatalities at the crossing and no accidents whatsoever in the last five years. Both the County Engineer and the Mayor of Centreville were primarily concerned with development of the industrial area.

There is no evidence to support the construction of a separation structure. However, there is evidence to make certain safety improvements at the existing County Highway 19 grade crossing to promote the safety and convenience of the public. This would be considered as a minor alteration or improvement as set forth in the third paragraph of 7401, above. As recommended by Commission staff, the excessive down time of the gates at the crossing which causes the vehicular blockage can, to a large extent, be alleviated by the installation of constant warning time circuitry at the crossing. Also, Commission staff recommended that the middle crossing surface should be replaced and that the highway approaches immediately adjacent to the north side of the north crossing and on each side of the south crossing should be reworked to remove the humps at the crossing and the eroding overlay. No objections were made as to these recommendations of Commission staff.

Allocation of Costs

On July 26, 1996, the Hearing Examiner requested, among other matters, the estimated cost figures relating to Commission staff's recommendations as set forth in the immediately preceding paragraph. Without these cost figures, it is impossible to allocate the costs among the parties and the Grade Crossing Protection Fund ("Fund"). As of March, 1997, these cost figures have not been received. The Commission, being concerned with the convenience of the public using County Highway 19, is of the opinion that the Railroads and Petitioner should each pay for 100 percent of the work as may be prescribed to them, respectively, by the terms of this order. Thereafter, upon completion of the work projects, the parties may by supplemental petition seek an allocation of costs with the Fund.

A Hearing Examiner's Proposed Order was served on each of the parties. There were no exceptions filed to the said order.

The Commission, being fully advised in the premises, finds that:

- (1) the County of St. Clair, St. Clair County, Illinois is political subdivision of the State of Illinois; the Gateway Western Railway Company and SPCSL Corp. are corporations engaged in the transportation for hire of property and are rail carriers as defined in the Illinois Commercial Transportation Law ("Law"); the Illinois Department of Transportation is an agency of the State of Illinois;
- (2) the Commission has jurisdiction of the subject matter herein and of the parties hereof;

- (3) the factual matters as set forth in the prefatory portion of this Order are true and correct and are hereby adopted as findings of fact;
- (4) public safety does not require a separation of grades by construction of an overpass structure at the crossing;
- (5) to promote the convenience of the public and to alleviate gate down time blockage, the at-grade crossing of County Highway 19 and the three tracks of the Railroads should be equipped with automatic flashing light signals and gates controlled by constant warning time circuitry to address the unnecessary gate operation during switching movements in the vicinity of the crossing; the middle track crossing surface should be replaced; all in conformance with the standards as set forth in 92 Ill. Adm. Code 1535;
- (6) public convenience also requires that the highway approaches immediately adjacent to the north side of the north crossing and on each side of the south crossing be reworked to remove the humps at the crossings and the eroding overlay;
- (7) the cost for the aforementioned work projects set forth in Finding (5) should be borne by the Railroads; the cost for the aforementioned work set forth in Finding (6) should be borne by the Petitioner;
- (8) after completion of the work projects as set forth in Finding (7), the parties should be allowed to file a supplemental petition for further allocation of costs with the Grade Crossing Protection Fund;

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Gateway Western Railway Company and the SPCSL Corp. be, and they are hereby, required and directed to furnish, install and thereafter maintain and operate automatic flashing light signals and gates controlled by constant warning time circuitry at the grade crossing with County Highway 19, St. Clair County, Illinois as set forth in Finding (5) above.

IT IS FURTHER ORDERED that the Gateway Western Railway Company and SPCSL Corp. be, and they are hereby, required to replace the middle track surface as set forth in Finding (5) above.

IT IS FURTHER ORDERED that the County of St. Clair be, and it hereby, required and directed to rework the highway approaches

immediately adjacent to the north side of the north crossing and on each side of the south crossing to remove the humps at the crossings and the eroding overlay as set forth in Finding (6) above.

IT IS FURTHERED ORDERED that the Gateway Western Railway Company, SPCSL Corp. and the County of St. Clair be, and each of them is, required and directed to proceed immediately in performing the work herein required of each of them and shall complete the work within one (1) year from the date of entry of this Order.

IT IS FURTHER ORDERED that the Gateway Western Railway Company, SPCSL Corp. and the County of St. Clair shall file progress reports with the Director of Processing, Transportation Division of the Illinois Commerce Commission within six (6) months from the date of this order stating the progress each has made toward the accomplishment of the work herein required of each of them.

IT IS FURTHERED ORDERED that the costs for making the improvements herein required shall be divided among the parties as set forth in Finding (7); allocation of costs with the Grade Crossing Protection Fund of the Motor Fuel Tax Law shall be in the manner as prescribed in Finding (8) of this Order.

IT IS FURTHER ORDERED that the County of St. Clair shall within 120 days from the date of this Order furnish to the Illinois Department of Transportation for its approval three (3) copies of the detailed plans and four (4) copies of the estimates of cost for the roadway approach improvements herein required.

IT IS FURTHER ORDERED that the Gateway Western Railway Company and SPCSL Corp. shall within one hundred and twenty (120) days from the date of this Order furnish to the Department of Transportation for its approval two (2) copies of the detailed estimate of cost and two (2) copies of the general layout plans applying to the installation of the automatic warning devices hereinbefore required.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall within thirty (30) days from its receipt of the aforesaid circuit plans and cost estimates furnish to the Commission a statement of its approval or disapproval thereof, this for the information of the Commission when considering the application hereinbefore required to be filed in accordance with Form 3 of 92 Ill. Admin. Code 1535.

IT IS FURTHER ORDERED that Gateway Western Railway Company and SPCSL Corp. shall submit to the Director of Processing,

Transportation Division within five (5) days of the completion of the work herein required of it, a National Inventory Update Report Form the crossings as notice of said completion.

IT IS FURTHER ORDERED that the County of St. Clair shall submit to the Director of Processing, Transportation Division of the Commission within five (5) days of the completion of the work herein required of it as notice of said completion.

IT IS FURTHER ORDERED that any objections and motions made in this proceeding that remain undisposed of be, and the same are hereby, disposed of consistent with the ultimate conclusions herein contained.

IT IS FURTHER ORDERED that, subject to Sections 18c-2201 and 18c-2206 of the Law, this is a final decision of the Commission subject to the Administrative Review Law.

By order of the Commission this 7th day of May, 1997.



Chairman

EXAMINER	<i>R. La</i>
DIRECTOR CHIEF	
Supervisor of Orders	<i>jit</i>